

IN THE CIRCUIT COURT OF THE
15TH JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION

CASE NO.: 50-2018-CA-003359-XXXX-MB-AE

CCK CONSTRUCTION SERVICES, INC.
a North Carolina corporation,

Plaintiff,

vs.

HUNT CONSTRUCTION GROUP, INC.
an Indiana corporation, LIBERTY MUTUAL
INSURANCE COMPANY, XL SPECIALTY
INSURANCE COMPANY, FEDERAL
INSURANCE COMPANY, and ZURICH
AMERICAN INSURANCE COMPANY,

Defendants.

**PLAINTIFF'S MOTION TO COMPEL NON-PARTIES WASHINGTON NATIONALS
BASEBALL CLUB, LLC; HOUSTON ASTROS, LLC; LERNER ENTERPRISES, LLC.,
MARC TAYLOR, INC.; AND HW SPRING TRAINING COMPLEX, LLC TO COMPLY
WITH AND PRODUCE DOCUMENTS RESPONSIVE TO PLAINTIFF'S SUBPOENA
DUCES TECUM**¹

Pursuant to Florida Rule of Civil Procedure 1.380, Plaintiff, CCK Construction Services, Inc. ("CCK"), by and through its undersigned counsel, hereby moves for an order compelling the Washington Nationals Baseball Club, LLC ("Nationals"); Houston Astros, LLC ("Astros"); Lerner Enterprises, LLC. ("Lerner"), Marc Taylor, Inc. ("Taylor"); and HW Spring Training Complex,

¹ Christopher P. Benvenuto was previously omitted from the Certificate of Service and has hereby been added.

LLC (“HW”) (collectively the “Third-Parties”) to comply with and produce documents responsive to the subpoenas *duces tecum* served by CCK, stating as follows:

I. PRELIMINARY STATEMENT

Baseball’s regular season has begun, which means Spring Training is over for the Washington Nationals and Houston Astros, who just completed the *third* season at their new Spring Training Facility known as FITTIEAM Ballpark of the Palm Beaches (the “Ballpark”). Both franchises are obviously quite pleased with the new Ballpark, as evidenced by the following excerpt on their official website: Home to the Houston Astros and Washington Nationals, the newest Spring Training destination in baseball is a sight to see. Come for a game, stay for the experience.

Yet, for reasons known only to the Washington Nationals, Houston Astros, and the other owner-related entities and agents collectively identified as the Third-Parties, they continue to withhold, without explanation or support, millions of dollars owed to the various contractors that built the Ballpark. One of those unpaid contractors is CCK, who is owed over \$600,000.00 in approved contract amounts plus hundreds-of-thousands-of-dollars in pending change order requests that the Third-Parties refuse to address. The documents requested in CCK’s subpoenas *duces tecum* simply seek information as to: (i) why two hugely successful major league baseball teams refuse to pay their bills; (ii) who, amongst the owner group is responsible for making decisions on funding, or lack thereof; and (iii) whether the refusal to fund has anything to do with CCK or the work it performed at the Ballpark.

Accordingly, the Court should grant this motion and over-rule the general and boiler plate objections asserted by the Third-Parties because the documents requested in the subpoenas *duces*

tecum (without deposition) served by CCK (the “Subpoenas”) are relevant to CCK’s efforts to obtain payment for the labor, services, and materials provided in connection with the construction of the Ball Park Project.

II. LEGAL ARGUMENT

1. Between March 1 and March 6, 2019, CCK served the Subpoenas on the Third-Parties. Copies of the Subpoenas and Return of Service Affidavits are attached hereto as **Composite Exhibit A**.

2. The Subpoenas seek relevant documents from the Third-Parties regarding the labor, services and materials provided by CCK to the Project, and the refusal of the Third-Parties to fund CCK’s payment applications associated with the Project despite Third-Parties having use of the Project for the past three years.

3. Rather than produce any documents responsive to the Subpoenas, Third-Parties waited until the last day to respond to the Subpoenas to assert blanket and general objections that have no merit whatsoever. See attached letter from counsel for Third-Parties asserting general objections, a copy of which is attached hereto as **Exhibit B**.

4. Indeed, the Houston Astros requested and were granted a time extension in which to produce the documents, only to turn around and join in the filing of the baseless objection letter.

5. The objections by Third-Parties are without merit. CCK may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action, whether it relates to the claim or defense of [a] party in the instant action. *See e.g.* Fla. R. Civ. P. 1.280(b)(1).

6. Notably, Defendants Hunt Construction Group, Inc., Liberty Mutual Insurance Company, XL Specialty Insurance Company, Federal Insurance Company, and Zurich America

Insurance Company (collectively, “Defendants”) – who are the general contractor and its sureties on the Project and the “middle link” in the contractual chain-of-privity between CCK and the owner group -- have asserted defenses in response to CCK’s claims alleging that CCK has not been paid for the labor, services and materials provided on the Project because Third Parties HW, the Astros, the Nationals and Taylor have refused to approve funding of the balance of CCK’s payment applications. The documents and records requested by CCK from Third-Parties are specific to the issue of non-payment and the funds remaining to be disbursed to CCK on the Project, and therefore highly relevant.

7. Indeed, it is not even necessary that the requested information be admissible at trial, so long as “the information sought appears reasonably calculated to lead to the discovery of admissible evidence.” *Id.* CCK’s document requests do just that.

8. It is well-settled under Florida law that complete disclosure in matters of discovery is favored. *See Beaches Open MRI of Jacksonville v. State Farm Mut. Auto. Ins. Co.*, Case No. 16-2012-SC-2965, 2013 Fla. Cir. LEXIS 1461 at *3 (Fla. 4th DCA, Jan. 25, 2013) (granting defendant’s motion to compel better discovery responses when plaintiffs’ objections and failure to produce a single document was not justified) (citing *ACandS Inc. v. Askew*, 597 So. 2d 895 (Fla. 1st DCA 1992)).

9. Third-Parties bear the burden of demonstrating that good cause is present to limit or prohibit the discovery requested in the Subpoenas. *See Towers v. City of Longwood*, 960 So. 2d 845, 848 (Fla. 5th DCA 2007) (denying protective order where non-party witness did not show good cause); *Beekie v. Morgan*, 751 So. 2d 694 (Fla. 5th DCA 2000) (stating that protective orders must be based on good cause and denying defendant’s motion for protective order where defendant failed to present evidence of annoyance, embarrassment, oppression, or undue burden or expense).

10. Third-Parties will not be able to meet this burden. The documents requested focus on: (i) why the owner group refuses to pay for the work CCK performed; (ii) who, amongst the owner group is responsible for making the decision not to fund; and (iii) whether the refusal has anything to do with CCK.

11. Importantly, the Third-Parties have not made any effort to produce any documents responsive to the Subpoenas. Instead, Third-Parties have asserted boilerplate objections to the Subpoenas and document requests specified therein that clearly have no merit and in today's electronic age, do not pose any undue burden on Third-Parties.

12. CCK is entitled to all non-privileged information and documents relating the decisions to withhold payment from CCK on the Project. The Subpoenas and the documents requested therein relate specifically to the issue of non-payment and the involvement by Third-Parties in the decision to withhold payment from CCK.

13. For the reasons set forth above, CCK requests that the Court grant the instant motion and require Third-Parties to produce documents responsive to the requests specified in the Subpoenas.

14. Moreover, pursuant to Fla. R. Civ. P. 1.380 (a)(4), CCK requests that the Court award CCK its reasonable attorneys' fees and costs associated with having to prepare and file the instant motion and appearing at any hearings thereon.

15. Undersigned counsel for CCK hereby certifies that prior to filing this motion, a good faith effort was made to resolve the issues raised herein with counsel for Third-Parties with no avail. As a result, counsel for CCK was required to file this motion.

WHEREFORE, CCK respectfully requests this Court grant the Motion and require Third Parties to produce documents responsive to the requests specified in the Subpoenas; award CCK

its reasonable costs and attorneys' fees incurred in bringing this Motion and attending a hearing thereon, in accordance with Florida Rule of Civil Procedure 1.380 (a)(4) together with such further relief the Court deems just, equitable, and proper under the circumstances.

/s/ Ralf R. Rodriguez

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed the foregoing with the Florida Courts E-Filing Portal which will send a notice of electronic filing to the following on this 8th day of April, 2019.

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